

### **REMARKS**

This is in response to the Office Action dated January 13, 2005. Claim 23 is amended, no claims are canceled, and claim 25 is added. Thus, claims 1-25 are now pending in this application.

#### **Information Disclosure Statement**

Applicant submitted a Supplemental Information Disclosure Statement and a 1449 Form on September 28, 2004. Applicant respectfully requests that initialed copies of the 1449 Forms be returned to Applicants' Representatives to indicate that the cited references have been considered by the Examiner.

#### **Double Patenting Rejection**

Claims 1-7, 9-11, 16-17 and 22 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 27-29 and 31-51 respectively of U.S. Patent No. 6,690,972. Applicant will consider filing a Terminal Disclaimer when the claims are otherwise found to be in condition for allowance. The Examiner is invited to call Applicant's below-named representative to address this issue when the claims are otherwise found to be allowable.

#### **§102 Rejection of the Claims**

Claim 23 was rejected under 35 USC § 102(b) as being anticipated Vollmann et al. (U.S. Patent No. 4,726,380, "Vollmann"). Applicant respectfully traverses the rejection at least for the following reasons.

Applicant amended claim 23 to further clarify the recited subject matter. Applicant submits that these amendments are supported throughout the specification, including at least at page 10, lines 17-28. Applicant is unable to find, among other things in the cited portions of Vollmann, a showing of a means for displaying a message of the first message type for one or more acceptable parameters, as recited in claim 23. The Office Action admits that Vollman does not display a message to indicate correctness (*Volmann et al. shows . . . means for providing a*

*visual indicator for one or more acceptable parameters (lack of message)).* Displaying a message of the first message type for one or more acceptable parameters provides a positive indication of correctness. A lack of a message does not necessarily mean that the parameters properly interact. For example, the lack of a message may be caused by a failure to address that particular combination of parameters in the programming.

Applicant respectfully requests withdrawal of the rejection, and reconsideration and allowance of claim 23.

### §103 Rejection of the Claims

Claims 16-17 and 19-23 were rejected under 35 USC § 103(a) as being unpatentable over Vollmann et al. (U.S. Patent No. 4,726,380) in view of Paisner (U.S. Patent No. 5,810,740). Applicant respectfully traverses the rejection at least for the following reasons.

With respect to independent claim 16, Applicant is unable to find, among other things, in the cited portions of Vollmann and Paisner a showing or suggestion of a means for using a first color to indicate one or more parameters for the programmable medical device that acceptably interact, a second color to indicate one or more allowable parameters indicating a warning to use discretion with respect to interaction of the allowable parameters to other entered parameters for the programmable medical device, and a third color to indicate one or more parameters for the programmable medical device that unacceptably interact, as recited in the claim. The recited color indicators have advantages for conveying information concerning parameter interaction. One advantage involves positively displaying information, including positively displaying the first color to indicate that the parameters acceptably interact, to provide a physician with the ability to intuitively resolve parameter interactions.

Applicant is unable to find a suggestion in either Vollmann or Paisner to combine the automatic programmer lockouts in Vollmann with a color channel quality indicator for an ECG signal channel in Paisner. Applicant respectfully submits that, even if Vollmann is combined with Paisner, the combination still fails to teach or suggest the recited subject matter. Should the rejection be maintained, Applicant respectfully requests the Examiner to clarify how a lack of a message/indicator can be a visual indicator of a first color for one or more acceptable parameters.

The Office Action states that use of certain colors, specifically red, yellow and green are known even to children as indicia of status or quality because children understand traffic signal, and thus appears to assert that the use of color as used in the claim is obvious based on a traffic signal. Applicant respectfully traverses. Although children understand a traffic signal, it does not follow that traffic signal colors are a universal indication of status or quality. According to the Minnesota Department of Public Safety regulations for traffic signs, red indicates stop and wait, yellow warns to use caution and that the signal is about to turn red, and green means go. (from Minnesota DPS website). Applicant submits that, while the traffic implications of these colors are known to the general population, the use of these colors to indicate a level of correctness for implantable device parameter interactions is neither analogous nor known by children, the public in general or those skilled in the art. Applicant respectfully submits that a convincing line of reasoning established on scientific principles or legal precedent has not been provided. Applicant submits that the references relied upon by the Examiner do not provide a motivation to use color as recited in claim 16, nor do they provide a motivation for combination with a traffic signal. Applicant further submits that a traffic signal does not provide motivation for combination with a programmable medical device to use color as recited in claim 16.

Claims 17 and 19-22 depend either directly or indirectly on claim 16, and are believed to be allowable at least for the reasons provided with respect to claim 16. Applicant respectfully requests withdrawal of the rejection, and reconsideration and allowance of claims 16-17 and 19-22.

With respect to independent claim 23, Applicant is unable to find, in the cited portions of Vollmann and Paisner, a fair suggestion of a means for displaying a message of the first message type for one or more acceptable parameters, as recited in the claim. As stated above with respect to claim 23, Applicant respectfully asserts that Vollmann does not anticipate the subject matter recited in claim 23. Applicant respectfully submits that the deficiencies in the rejection with respect to Vollmann discussed above are not overcome by combination with the cited portions of Paisner. In addition, Applicant respectfully submits that a proper motivation to combine the references has not been provided.

Claim 24 was rejected under 35 USC § 103(a) as being unpatentable over Vollmann et al. (U.S. Patent No. 4,726,380). Claim 24 depends on claim 23, and is believed to be allowable at least for the reasons provided with respect to claim 23 stated above.

Claim 25 is added. Support for this new claim can be found throughout the specification, including at least at page 1, lines 20-26 and page 6, lines 12-14. Claim 25 depends on claim 23, and is believed to be allowable at least for the reasons provided with respect to claim 23 stated above.

Allowable Subject Matter

Claims 1-7 and 9-11 would be allowable if rewritten or amended to overcome the Double Patenting rejection set forth in this Office Action, or upon the filing of a proper Terminal Disclaimer. When the claims are otherwise in condition for allowance, the Examiner is invited to call Applicant's representative to request a Terminal Disclaimer.

Claims 8, 12-15 and 18 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant respectfully submits that the base claims of these claims are in condition for allowance, or will be if a Terminal Disclaimer is filed, and thus these claims are also in condition for allowance.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6960 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

VICKIE L. CONLEY ET AL.

By their Representatives,


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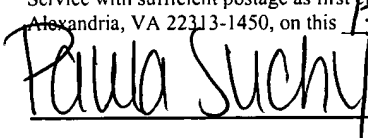
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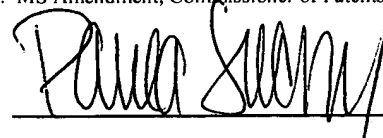
Date 4-13-05

By   
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 13 day of April, 2005.



Name



Signature